

Claimant contends the appeal should be denied for the following reasons: (1) res judicata; (2) competent evidence; and, (3) equity.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is the third review before the Board from a preliminary hearing in this matter. On October 8, 1999, Administrative Law Judge Brad E. Avery determined claimant sustained an occupational disease arising out of and in the course of employment and granted claimant medical treatment with Dr. Rea. The respondent requested review of this decision contending the claimant did not suffer an occupational disease arising out of and in the course of her employment. On January 25, 2000, the Board reversed the Administrative Law Judge and determined the claimant had failed to prove that she suffered an occupational disease which arose out of and in the course of her employment.

Following a second preliminary hearing on July 11, 2000, the Administrative Law Judge entered an order dated July 13, 2000, which determined claimant sustained an occupational disease arising out of and in the course of employment and ordered medical treatment with Dr. Rea. The respondent requested review of this decision contending the claimant did not suffer an occupational disease arising out of and in the course of her employment. On September 29, 2000, the Board modified the Administrative Law Judge's decision to the extent that it found claimant's alleged condition of multiple chemical sensitivity to be aggravated by working for respondent or compensable under the Act. The Board affirmed the preliminary order to the extent that it found the exacerbation of claimant's migraine headaches compensable under the Act.

The Administrative Law Judge conducted a preliminary hearing on January 30, 2001, and entered an order on February 5, 2001, which required respondent to continue to provide treatment for claimant's headaches with Dr. Rea. The Administrative Law Judge denied the claimant's motion to order retroactive medical treatment from the period of the court's first order to the Workers Compensation Board's decision on January 25, 2000. A nunc pro tunc order was entered on February 8, 2001, correcting the year of the order. No request for review from this order was filed by either party.

The respondent's motion to terminate medical benefits was heard on March 30, 2001, and on April 6, 2001, the Administrative Law Judge denied respondent's motion to terminate medical benefits. Respondent filed the instant application for review of the decision.

At the hearing on the motion to terminate medical benefits the respondent argued that the Board's ruling on September 29, 2000, only entitled claimant to medical treatment for her migraine headache. Respondent offered a report from Dr. Zwibelman wherein he opined that migraine headaches last, at most, a week. He further opined that claimant's ongoing headaches would not be related to her chemical exposure. Therefore, the

respondent contends that the claimant's ongoing migraine headaches are not related to her occupational injury.

The claimant proffered a letter from Dr. Rea which concluded the headache symptoms are related to the chemical exposure at work and recommended additional treatment consisting of sauna detoxification which would entail intravenous and oxygen therapy.

Although the respondent's first issue raised on review appears to raise a jurisdictional issue regarding compensability of the claim, the argument made before the Administrative Law Judge at the hearing was simply that according to respondent's doctor no further treatment was necessary for the migraine headache.

This is an appeal from a preliminary hearing. The Board has jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 44-551(b)(2)(A). In addition K.S.A. 44-534a (a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified. A contention that the Administrative Law Judge has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants authority to an Administrative Law Judge to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation. After considering all of the evidence presented, including the medical reports introduced at the hearing, the Administrative Law Judge denied the motion to terminate medical treatment. In doing so, the Administrative Law Judge did not exceed his jurisdiction.

The claimant may preserve those issues for final award as provided by K.S.A. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that it does not have jurisdiction to review, at this juncture of the proceedings, the preliminary hearing Order dated April 6, 2001, entered by Administrative Law Judge Brad E. Avery and that this review should be, and is hereby dismissed.

IT IS SO ORDERED.

Dated this _____ day of July 2001.

BOARD MEMBER

c: William Phalen, Attorney, Pittsburg, Kansas
Brenden Webb, Attorney, Overland Park, Kansas
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director